

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

The Telephone Consumer Protection)
Act of 1991)

CC Docket No. 92-90

REPLY COMMENTS OF COMCAST CELLULAR COMMUNICATIONS, INC.

Comcast Cellular Communications, Inc. ("Comcast Cellular"), by its attorneys and pursuant to Section 1.415(c) of the Commission's Rules, hereby submits the following reply comments to the Commission's Notice of Proposed Rulemaking, CC Docket No. 92-90, FCC 92-176 (released April 17, 1992) ("NPRM"), and the comments filed in response thereto, concerning proposed rules implementing the Telephone Consumer Protection Act of 1991 ("TCPA").

The TCPA places restrictions on automatic telephone dialing systems and telephone facsimile machines for telemarketing purposes. The Commission's proposed regulations generally follow the TCPA. Like the TCPA, proposed Section 64.1100(a) prohibits automatically dialed calls to telephone numbers assigned to a paging, cellular telephone or specialized mobile radio service, or any service for which the called party is charged for the call.

Comcast Cellular's principal business is the acquisition, development and operation of cellular radio systems. Comcast

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Cellular, therefore, responds to those comments which discuss the proposed rules in relation to cellular telephone service.^{1/}

Proposed Exemptions To The Prohibitions Of The TCPA Should Not Be Applied To Cellular Telephones

Comcast Cellular generally supports the Commission's proposed rules because they strike a proper balance between the legitimate uses of autodialer equipment and telemarketing and the privacy concerns of consumers. However, Comcast Cellular urges the Commission to place the broadest restrictions possible on calls made to cellular telephones, except where the cellular carrier itself is placing the call to its customer at no charge to the customer. Since cellular telephone subscribers, unlike landline customers, pay for incoming calls, the Commission should not permit the four proposed exceptions to the autodialer prohibitions to be applied to calls to cellular telephones.^{2/} As currently written, the exceptions in Section 64.1100(c) are limited only to calls to residential telephones.

Under proposed Section 64.1100(c), the following kinds of calls are exempted from the autodialer prohibitions if they are made to a residential telephone: 1) calls not made for a

^{1/} See Comments of GTE Service Corporation, CC Docket 92-90, pp. 6-7 (filed May 26, 1992); Comments of Cellular Telecommunications Industry Association, CC Docket 92-90 (filed May 26, 1992); Comments of Centel Corporation, CC Docket 92-90, p. 7 (filed May 26, 1992); and Comments of BellSouth Corporation, CC Docket 92-90, pp. 3-4 and 10 (filed May 26, 1992).

^{2/} See Comments of BellSouth Corporation at 6 n.10.

commercial purpose; 2) calls made for a commercial purpose but which do not include an unsolicited advertisement; 3) calls to persons with whom the calling party has or has had a business relationship; and 4) calls from a tax exempt non-profit organization. Comcast Cellular strongly recommends that the Commission confirm that the foregoing exceptions do not apply to cellular telephones. Automatically dialed calls and unsolicited telemarketing calls are a significant source of complaint from Comcast Cellular's cellular subscribers. In addition, since Comcast Cellular's policy is to provide credit to customers requesting one for such calls, a revenue loss results as well. Such complaints and revenue losses would only increase if the foregoing exemptions were applicable to cellular telephones.

Comcast Cellular agrees with BellSouth Corporation, Cellular Telecommunications Industry Association, Centel Corporation and GTE Service Corporation^{3/} that the Commission should clarify that, under the rules, cellular carriers may utilize autodialers to contact their own clients for purposes of servicing equipment and monitoring customer satisfaction, or for issuing pre-recorded messages to roamers travelling into their home markets. Since the subscriber is not charged for such calls, Comcast Cellular believes that such a limited exception would comport with TCPA's statutory history, which indicates that Congress did not intend

^{3/} See Comments of BellSouth Corporation at 3-4; Comments of Cellular Telecommunications Industry Association at 2; Comments of Centel Corporation at 7; and Comments of GTE Service Corporation at 7.

to interfere with established business relationships, particularly where there is no charge for the call to the subscriber. Comcast Cellular believes that the above-described carrier-to-customer calls fall within the "prior consent" exception of Section 64.1100(a)(1) because they are part and parcel of the carrier-customer relationship in the cellular industry.

Conclusion

Comcast Cellular applauds the Commission's proposed rules implementing the Telephone Consumer Protection Act of 1991. In order to adequately protect the interests of cellular telephone subscribers, Comcast Cellular respectfully requests that the Commission consider Comcast Cellular's above comments in adopting the regulations.

Respectfully submitted,

COMCAST CELLULAR
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June 25, 1992

CERTIFICATE OF SERVICE

I, Ruth E. McGovern, a secretary in the law offices of Gurman, Kurtis, Blask & Freedman, Chartered, do hereby certify that on this 25th day of June, 1992, a copy of the foregoing "REPLY COMMENTS OF COMCAST CELLULAR COMMUNICATIONS, INC." was sent by U.S. first class mail, postage prepaid to:

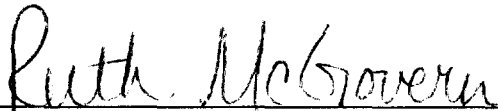
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